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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/710313	RECEIVED CENTRAL FAX CENTER MAY 26 2005
	Filing Date	07/01/2004	
	First Named Inventor	COLBY	
	Art Unit	3671	
	Examiner Name	KOVACS	
Total Number of Pages in This Submission	4	Attorney Docket Number	6504-0401

ENCLOSURES (Check all that apply)		
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Chabot & Associates		
Signature			
Printed name	Ralph D. Chabot		
Date	05/26/2005	Reg. No.	39,133

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MAY 26 2005
Attorney Docket No: 6504-0401

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: COLBY
Serial No: 10/710313
Filed: 07/01/2004

Examiner: KOVACS, Arpad F
Art Unit: 3671

Title: METHOD FOR HARVESTING

**PETITION REQUESTING WITHDRAWAL OF OFFICE ACTION MADE FINAL
(37 C.F.R. §1.181)**

VIA FAX: (703)872-9306

Commissioner of Patents and Trademarks
PO Box 1450
Alexandria, VA 22313-1450
Attn: Technology Center Director, Group 3600

SIR:

INTRODUCTION

For the reasons presented below, Applicant petitions the Technology Center Director of Group 3600 to invoke the supervisory authority of the Commissioner under 37 CFR 1.181 to rule that the current final rejection involving the referenced application is premature. MPEP §1002.02(c)(3)(a). No petition fee is required.

FACTUAL GROUNDS

Examiner Kovacs issued an Office Action made Final on 04/13/2005.

Applicant's attorney diligently submitted a fax reply on 04/26/2005 requesting the Examiner withdraw the Office Action made Final. In this reply, Applicant pointed out various

discrepancies such as: 1) claims categorized as allowed but were cited later in the paper as being rejected; 2) claims categorized as allowed but cited later as requiring amendment to avoid an objection; and 3) the prior art reference on which the Examiner based his 102 rejection did not comport with the column and line numbers of the cited reference.

Rather than withdrawing the Office Action as premature, the Examiner held a telephonic interview with Applicant's Attorney on 05/03/2005. Following this discussion, Applicant timely filed an Amendment After Final on 05/12/2005 believing the submitted amendment would place the pending application into a condition for allowance.

However, instead of receiving a Notice of Allowance, Applicant has received an "Advisory Action Before the Filing of an Appeal Brief" dated 05/23/2005. With respect to this paper, it is unclear to Applicant as to what are the proper grounds on which to base its argument on appeal. The following reasons are provided:

1. It is unclear whether Applicant's 05/12/2005 Amendment was ever entered. The Examiner's 05/23/2005 paper contains a page containing a handwritten note: "Only enter if appealed."

2. The errors mentioned above concerning the current Office Action made Final are still of record and have not been affirmatively corrected by Examiner Kovacs.

3. Item 11 of the Advisory Action dated 05/23/2005, for the first time, introduces a rejection on the basis of *In re Hutchison*, 69 USPQ 138, a 1946 decision concerning an originally submitted claim. Applicant believes it is improper for the Examiner to cite a case decided before the 1952 Patent Act for a §102 rejection. Furthermore, Applicant believes the Examiner misapplied a decision involving a preamble phrase to reject a claim element. Finally and most

importantly, this rejection was never cited by Examiner Kovacs in his First or Second Office Actions. Applicant simply has had no opportunity to address this ground of rejection.

"The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed". MPEP §706.07.

Applicant believes *In re Hutchison* should have been cited by the Examiner in his first Office Action dated 12/08/2004 since the claim at-issue has never been amended. Applicant would then have had a fair opportunity to address the Examiner's ground for rejection.

CONCLUSION

For the reasons presented above, Applicant respectfully petitions the Technology Center Director of Group 3600 to withdraw the 04/13/2005 Office Action made Final as premature, permit all subsequent amendments to be entered into the record, and direct Examiner Kovacs to issue a non-final Office Action so Applicant will be placed in the same position it would have been in for addressing *In re Hutchison*.

Respectfully submitted,

Dated: May 26, 2005



Ralph D. Chabot, Reg. No. 39,133
Attorney for Applicant